

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

TS EMPLOYMENT, INC.,

Debtor.

19-cv-8087 (NSR)
(on motion for withdrawal of the
bankruptcy reference)

Chapter 11 Case No. 15-10243 (MG)

JAMES S. FELTMAN, not individually but solely
as chapter 11 trustee for TS Employment, Inc.,

Adv. Proc. No. 18-1649 (MG)

Plaintiff,

v.

KOSSOFF & KOSSOFF LLP and IRWIN
KOSSOFF,

Defendants.

RESPONSE TO DEFENDANTS' MOTION TO WITHDRAW THE REFERENCE

Plaintiff James S. Feltman, not individually but solely as chapter 11 trustee (“Trustee” or “Plaintiff”) for the bankruptcy estate of TS Employment, Inc. (“TSE”), files this response to the Defendants’ Motion to Withdraw the Reference (“Motion”) (Dkt. 1) and Memorandum of Law in Support of the Motion (Dkt. 4).

1. On October 5, 2018, Plaintiff, the bankruptcy trustee for TSE, filed the above-captioned bankruptcy adversary proceeding against Kossoff & Kossoff LLP and Irwin Kossoff (“Defendants”), TSE’s former outside accountants. The adversary complaint alleges accounting malpractice/negligence and fraud.

2. On August 27, 2019, Defendants filed their Motion to withdraw the reference of the adversary proceeding to the bankruptcy court, asserting that the reference should be withdrawn because the adversary complaint alleges only non-core claims with respect to which

the bankruptcy court cannot enter a final judgment, and because Defendants have made a jury demand and the bankruptcy court cannot conduct a jury trial without all parties' consent. The Motion requests withdrawal "for purposes of trial on completion of discovery." (Dkt. 1 at 1; Dkt. 4 at 1.)

3. Since the filing of the adversary complaint, the bankruptcy court has considered and ruled upon responsive pleadings, including a motion to dismiss the complaint which was granted with leave to re-plead. In addition (as Defendants note), discovery is ongoing; on July 15, 2019, the Bankruptcy Court entered a Case Management and Scheduling Order setting November 12, 2019 as the fact discovery cutoff and December 12, 2019 as the expert discovery cutoff. (Dkt. 5, Ex. 3 at 1-2.)¹

4. The Trustee does not oppose withdrawal of the reference upon completion of all pretrial proceedings, but withdrawal of the reference at this time is premature. Courts in this district routinely deny without prejudice or defer motions to withdraw the reference to the bankruptcy court until a case is ready to be tried. See *Lehman Bros. Holdings v. Standard Pac. Mortg., Inc.*, No. 19cv4080, 2019 U.S. Dist. LEXIS 143871, at *11 (S.D.N.Y. Aug. 23, 2019) (declining to withdraw the reference where adversary proceedings may not reach trial); *In re HHH Choices Health Plan, LLC*, No. 15-11158-MEW, 2019 WL 1409712, at *3 (S.D.N.Y. Mar. 28, 2019) (denying motion to withdraw the reference filed while discovery was open without prejudice to renewal when the bankruptcy court certifies that the case is ready to proceed to trial); *Buchwald v. Renco Grp. (In re Magnesium Corp. of Am.)*, No. 04 Civ. 1357, 2004 WL 1161172, at *2 (S.D.N.Y. May 24, 2004) ("courts in this District have found it appropriate to defer withdrawing the reference until the case is trial ready"). Consistent with the practice of

¹ The parties have agreed to participate in and are preparing for non-binding mediation during October 2019; the parties have agreed to seek an extension of the fact and expert discovery deadlines for an additional 120 days. (Dkt. 36 in Adv. Proc. 18-1649.)

courts in this District, the Trustee requests the Court defer consideration of the Motion until pretrial proceedings have concluded.

WHEREFORE, Plaintiff respectfully requests the Court defer consideration of the Motion until pretrial proceedings have concluded and the bankruptcy court has certified that the adversary proceeding is ready for trial, and grant such other relief as may be just and equitable.

Dated: New York, New York
September 10, 2019

Respectfully submitted,

/s/ Vincent E. Lazar

Vincent E. Lazar
JENNER & BLOCK LLP
353 North Clark Street
Chicago, Illinois 60654
Tel. (312) 222-9350
Fax (312) 527-0484
vlazar@jenner.com

Richard Levin
Carl Wedoff
JENNER & BLOCK LLP
919 Third Avenue
New York, New York 10022
Tel. (212) 891-1600
Fax (212) 909-0815
rlevin@jenner.com
cwedoff@jenner.com

Attorneys for the Chapter 11 Trustee